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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.L., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

A.L.,

Defendant and Appellant.

E049297

(Super.Ct.No. J216392)

OPINION

APPEAL from the Superior Court of San Bernardino County. Harold T.

Wilson, Jr., Judge, and James A. Edwards, Judge.[†] Affirmed.

Eric Cioffi, under appointment by the Court of Appeal, for Defendant and
Appellant.

[†] Retired judge of the San Bernardino Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Pamela Ratner Sobeck and Christopher P. Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

A juvenile wardship petition was filed alleging that defendant and appellant A.L. (minor) committed the offense of receiving stolen property. (Pen. Code, § 496 subd. (a).) A juvenile court found the allegation to be true. Minor was on probation at the time he committed the current offense. The juvenile court continued him as a ward in his mother's custody, with additional terms of probation, including the condition that he pay restitution to the victim.

Minor now challenges the juvenile court's order for victim restitution. We affirm.

FACTUAL BACKGROUND¹

On January 4, 2009, at approximately 7:00 p.m., the victim and his family left their home, after locking all the doors and windows. When they returned at 10:00 p.m. that night, the front door and screen door were open. The victim called the police and went inside. The house had been ransacked. Several items were missing, including two plasma televisions, a television remote control, a Remington rifle, two laptops, three iPods, a camera, a CD player, a computer hard drive, and a cell phone. The computers had the victim's name on them. Officer Breen arrived at approximately 10:15 p.m.

At approximately 10:40 p.m. that night, Officer Maltese was on patrol and observed a black, two-door Acura (the car) with tinted windows pull into a driveway on

¹ This brief statement of the facts is taken from the reporter's transcript in appellate case No. E047712.

North Sage Avenue in Rialto. A male passenger exited the car on the passenger's side, walked up to the door of the residence, and knocked or rang the doorbell. Officer Maltese felt that suspicious activity was taking place, so he got out of his patrol car and asked the individual to take a seat on the curb. He also asked the driver to step out of the car. The driver immediately backed the car out of the driveway and took off. Officer Maltese called for backup, and Officer Breen arrived shortly thereafter. Officer Maltese pursued the car, and it eventually crashed into a curb. The driver immediately fled from the car. Officers Maltese and Breen approached the car. Defendant was seated in the front passenger seat, and they arrested him. Officer Maltese observed certain items in the car. On the front passenger floorboard, there was a cell phone, an iPod, and a television remote control. There was a crowbar under the front passenger seat. Other items found in the car included vise grips, wire cutters, screwdrivers, pliers, gloves, and a baseball hat. Officer Maltese also found a black knit cap in the rear hatch area, as well as laptop computers.

The victim later identified the laptop computers, two iPods, the hard drive, and the cell phone, as his property.

ANALYSIS

The Juvenile Court Did Not Abuse Its Discretion in Ordering

Minor to Pay Victim Restitution

Minor argues that the juvenile court abused its discretion in imposing the probation condition that he pay victim restitution, pursuant to Welfare and Institutions

Code section 730.6.² He asserts that the restitution order was based on losses suffered as a result of a burglary, which was not alleged in his section 602 petition. The petition only alleged that he received stolen property. Thus, he claims that his conduct did not cause the losses upon which the restitution order was based. We find no abuse of discretion.

A. Standard of Review

“A juvenile court is vested with broad discretion to select appropriate probation conditions.” (*In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1033.) “Generally, an order of restitution will not be overturned in the absence of an abuse of discretion. [Citation.] The court abuses its discretion when it acts contrary to law [citation] or fails to ‘use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious’ [citation].” (*In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1016.)

B. The Juvenile Court Had the Authority to Order Restitution

Minor argues that the juvenile court lacked authority to order restitution under section 730.6, since his section 602 petition alleged only that he received stolen property, not that he committed burglary. Section 730.6, subdivision (a)(1), provides: “It is the intent of the Legislature that a victim of *conduct for which a minor is found to be a person described in Section 602* who incurs any economic loss as a result of the minor’s conduct shall receive restitution directly from that minor.” (Italics added.) We agree with minor that the juvenile court did not have the authority to order restitution under

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

section 730.6, since he was found to be a ward of the court based on the allegation of receiving stolen property. However, it is not entirely clear from the record that the juvenile court actually based its restitution order on section 730.6. The initial probation condition (No. 32) recommended by the probation officer stated that minor would be required to “[c]ooperate in the payment of restitution to the victim . . . pursuant to W&I 730.6/730.7, in an amount and at a rate to be recommended by the probation officer” However, minor’s counsel objected to this condition, on the same ground being asserted on appeal, and the juvenile court stayed term No. 32, pending a hearing. A hearing on the restitution issue was held on June 9, 2009, and minor’s counsel argued that the juvenile court could not order victim restitution, since the economic loss was not a direct result of minor’s conduct. After hearing arguments from both parties, the juvenile court found that minor’s conduct was responsible for the losses that occurred, and that restitution was important to his rehabilitation. The juvenile court stated it was going to order minor to pay restitution. However, the juvenile court did not state that it was ordering restitution under section 730.6. Subsequently, the juvenile court lifted the stay and imposed term No. 32, at a hearing on September 18, 2009. At that time, minor’s counsel objected for the record and asked the probation officer, “Can you just state for the record what—so it’s clear what term number 32 is?” The probation officer replied, “[t]erm 32 is cooperate in a payment of restitution to the victim . . . in an amount to be determined.” Again, there was no mention of section 730.6.

The record indicates, rather, that the juvenile court did *not* order restitution under section 730.6. The juvenile court was well aware that minor was not alleged to have committed burglary. At the hearing on June 9, 2009, the juvenile court commented that it was surprised minor was not charged with burglary, and noted that, in view of the evidence, he could have been so charged. Moreover, the juvenile court cited portions of *In re I.M.* (2005) 125 Cal.App.4th 1195 (*I.M.*). In that case, the juvenile court sustained a wardship petition alleging that a minor had been an accessory after the fact to a murder and that in committing that offense, he had acted with the specific intent to benefit, promote, further, or assist the unlawful conduct of a criminal street gang. (*Id.* at p. 1199; § 186.22, subd. (b)(1).) The reviewing court determined that the juvenile court did not err in ordering as a condition of the minor’s probation that he pay restitution to the victim’s family for the costs of the funeral. In reaching this conclusion, the appellate court stated: “That no statute requires restitution in cases such as this does not mean that the court lacked the power to grant it. . . . [¶] That a defendant was not personally or immediately responsible for the victim’s loss does not render an order of restitution improper. To the contrary, ‘California courts have long interpreted the trial courts’ discretion to encompass the ordering of restitution as a condition of probation even when the loss was *not necessarily caused by the criminal conduct underlying the conviction*. Under certain circumstances, restitution has been found proper where the loss was caused by *related conduct* not resulting in a conviction [citation], by conduct underlying dismissed and uncharged counts [citation], and by conduct resulting in an acquittal

[citation].” (Id. at pp. 1209-1210; see also *People v. Carbajal* (1995) 10 Cal.4th 1114, 1121, italics added.)

Furthermore, the juvenile court here relied heavily upon *In re T.C.* (2009) 173 Cal.App.4th 837 (*T.C.*), in concluding that it had the authority to order restitution for conduct that was not alleged in the section 602 petition. In that case, the trial court ordered the minor to pay victim restitution on a count of the petition that had been dismissed. (*T.C.*, at p. 842.) The appellate court held that the trial court properly ordered restitution as a condition of probation under section 730, subdivision (b). (*T.C.*, at p. 850.) Under section 730, subdivision (b), the trial court has the broad authority to “impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” The *T.C.* court cited the test from *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*) (see *post*, § C.), and concluded that the restitution order was reasonably related to future criminality. (*T.C.*, at p. 847.)

Given the juvenile court’s reliance on *I.M.*, *supra*, 125 Cal.App.4th 1195, and *T.C.*, *supra*, 173 Cal.App.4th 837, it is apparent that it did not order restitution under section 730.6. Moreover, these cases make it clear that the juvenile court was not precluded from ordering minor to pay restitution for the losses incurred from the burglary, even though he was not alleged to have committed the burglary.

Minor claims there is no authority to order restitution outside of Welfare and Institutions Code section 730.6. Specifically, he asserts that Welfare and Institutions Code section 730 does not authorize a court to order restitution since it contains no

express language concerning restitution, and it only sets forth “the general proposition that ‘the court may impose and require any and all reasonable conditions that it may determine fitting and proper’” He reasons that, since “a more specific statute controls over a more general one,” we can only look to Welfare and Institutions Code section 730.6 for purposes of ordering restitution. We disagree. Minor is relying upon the “general principle of statutory construction that a specific provision relating to a particular subject prevails over a general provision on that subject [citations].” (*Cumero v. Public Employment Relations Bd.* (1989) 49 Cal.3d 575, 587.) However, that principle only applies “when a general and [a] particular provision are inconsistent.” (Code Civ. Proc., § 1859.) Welfare and Institutions Code sections 730.6 and 730 are not inconsistent. We agree with the court in *T.C.*, *supra*, 173 Cal.App.4th 837, which explained that Welfare and Institutions Code section 730.6 did not “displace[] the well-recognized authority of a juvenile court to impose ‘any and all reasonable conditions [of probation] that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced’ pursuant to [Welfare and Institutions Code] section 730, subdivision (b). [Citation.] Nothing in the language of [Welfare and Institutions Code] section 730.6 compels that conclusion.” (*T.C.*, at pp. 844-845.)

We conclude that the juvenile court had the discretionary authority under section 730, subdivision (b), to order restitution as a condition of minor’s probation.

C. The Restitution Order Was Reasonably Related to Minor's Future Criminality

Minor next contends that the restitution order was not reasonably related to his conduct or future criminality. We disagree.

Our Supreme Court, in *Lent*, *supra*, 15 Cal.3d 481, established a three-part test for determining the validity of a condition of probation: “A condition of probation will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality’ [Citation.]” (*Id.* at p. 486.) In other words, “the question simply is whether the order is reasonably related to the crime of which the defendant was convicted or to future criminality.” (*I.M.*, *supra*, 125 Cal.App.4th at p. 1209.) This test applies to juvenile court probation orders. (*In re Josh W.* (1997) 55 Cal.App.4th 1, 6.)

I.M., *supra*, 125 Cal.App.4th 1195, is instructive here. In that case, as discussed *ante*, the minor was found to be an accessory after the fact to murder. The juvenile court placed him on probation and ordered, as a condition of probation, that he pay restitution to cover the cost of the victim's funeral. The appellate court concluded that although the minor's conduct did not cause the loss upon which the restitution order was based, the juvenile court did not abuse its discretion in ordering restitution for that loss. The court stated that because the minor had been found to have been promoting and assisting gang conduct, the restitution order served the rehabilitative purpose of making the minor aware of the consequences of his choice of participating in gang activities, including the emotional and financial effects on the family members of the victims of gang violence.

Thus, the restitution order was directly related to defendant's future criminality. (*Id.* at pp. 1199-1210.)

We acknowledge that the gang-related considerations present in *I.M.* are absent here. However, an accessory after the fact to a murder assists the perpetrator in getting away with the murder and in that way assists in the criminal enterprise. In a similar way, the act of unlawfully receiving property stolen in a burglary occurs after the burglary and assists in one of the main harms of the burglary, i.e., depriving the victim of his property. Penal Code section 496, subdivision (a), which criminalizes the receipt of stolen property, "is directed at those who knowingly deal with thieves and with their stolen goods after the theft has been committed . . . in order to provide the thieves with a . . . depository for their loot." (*People v. Tatum* (1962) 209 Cal.App.2d 179, 183, superseded by statute on another ground as stated in *In re Kali D.* (1995) 37 Cal.App.4th 381, 385.) A receiver of stolen property thereby assists the thief. As stated in *Lent, supra*, "an order for restitution, i.e., attempting to make a victim whole, has generally been deemed a deterrent to future criminality [citation]." (*Lent, supra*, 15 Cal.3d at p. 486.) The restitution order here serves the rehabilitative purpose of impressing on minor that one of the consequences of his receipt of stolen property will be his liability for the full costs of the victim's losses. Thus, the restitution order was a deterrent to his future criminality.

Minor relies upon *People v. Scroggins* (1987) 191 Cal.App.3d 502 (*Scroggins*), but *Scroggins* is distinguishable. In *Scroggins*, burglaries occurred in four apartment units of the same complex. The defendant was charged and convicted of receiving some stolen property, which was found in his sister's apartment, where he was residing at the

time of the burglaries. Those items of property were recovered by the police and returned to the rightful owners. The defendant was never charged with or found to be criminally responsible for the burglaries. Yet, the trial court ordered him to pay restitution for the property still not recovered from the burglaries. The appellate court found that the trial court erred in ordering the defendant to pay restitution to burglary victims whose losses were not connected to the defendant's crime. The appellate court noted that the trial court did not conclude the defendant was responsible for the other losses that it ordered paid. (*Id.* at pp. 504-506.)

In *Scroggins*, items were taken from residents living in four separate apartment units, and there was no evidence connecting those losses to each other or to the defendant's crime. (*Scroggins, supra*, 191 Cal.App.3d at p. 504.) In contrast, the property in the instant case was taken from only one home. The police found minor in a car with property that was stolen from the victim's home. The stolen items found in the car with minor were clearly related to the other items stolen from the victim's home during the same burglary, but not recovered. Thus, the juvenile court here properly concluded that the record supported a finding that minor was responsible for the other losses.

In sum, we conclude on this record that the juvenile court did not abuse its discretion in requiring minor to pay restitution to the victim for the unrecovered items taken during the burglary.³

DISPOSITION

The order is affirmed.

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HOLLENHORST
Acting P.J.

We concur:

RICHLI
J.

MILLER
J.

³ We note that minor does not argue that the juvenile court failed to hold a hearing on his ability to pay restitution. He only mentions the issue of the ability to pay restitution in a footnote, wherein he states that, for purposes of calculating the award, it matters whether the juvenile court imposed restitution pursuant to section 730.6 or some other statutory authority. We further note that minor did not claim below, or on appeal, the inability to pay restitution. Rather, right after the juvenile court ordered restitution at the June 9, 2009 hearing, minor's counsel simply requested the opportunity to talk with the prosecution to work out the amount of restitution to be paid, and he offered to provide the juvenile court with some estimates for the replacement costs of some of the items.